

CUMULATIVE DIGEST

CH. 1 ACCOUNTABILITY

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§1-1

Generally

People v. Fernandez, 2014 IL 115527 (No. 115527, 3/20/14)

1. 720 ILCS 5/5-2(c) provides that a person is legally accountable for the criminal conduct of another if before or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid the other person in the planning or commission of the offense. The State may prove intent to promote or facilitate the crime by presenting evidence that the defendant shared the criminal intent of the principal or by showing that there was a common criminal design. Under the “common-design” rule, if two or more persons engage in a common criminal design or agreement, any acts which one party commits in furtherance of the common design are considered to be the acts of all of the parties to the design or agreement.

In addition, evidence that a defendant voluntarily attached himself to a group which intended to commit illegal acts, with knowledge of that intent, gives rise to an inference that defendant shared the common purpose. That inference will support a finding that defendant is guilty by accountability for an offense committed by another member of the group.

The court rejected **People v. Phillips**, 2012 IL App (1st) 101923, which held that a defendant who is part of a common design is not deemed to have intended to assist in the commission of a crime involving a firearm if he did not know that another member of the group possessed a firearm. Under the common design rule, once a defendant agrees to participate in a crime, he is liable for every criminal act committed in connection with that design, including unplanned shootings committed by a companion whom defendant did not know was armed.

2. Here, defendant was properly convicted of aggravated discharge of a firearm in the direction of a peace officer. Defendant entered into a plan to burglarize cars with a companion whom defendant did not know was armed. Defendant waited in the car while his companion burglarized a car. An off-duty police officer interrupted the offense, and gunshots were exchanged between the officer and the companion as defendant drove the companion from the scene. Defendant remained in close company with the companion for several hours until they were arrested, and not only failed to report the shooting but took steps to conceal it.

Under these circumstances, defendant was part of a common design bent on committing criminal acts. Thus, defendant was accountable for all crimes committed in furtherance of the common design, including the unplanned shooting.

3. The court distinguished **People v. Dennis**, 181 IL 2d 87, 692 N.E.2d 325, (1998) and **People v. Taylor**, 186 IL 2d 439, 712 N.E.2d 326 (1999), which involved accountability by persons who drove alleged principals from crime scenes but without knowledge of the principals’ intent to commit a crime. The issue in **Dennis** and **Taylor** was whether the alleged accomplice shared the principal’s intent, not whether there was a common design to commit criminal offenses. Here, by contrast, the defendant agreed to be part of the scheme to commit burglaries. Under the common design rule, he was accountable for all offenses which occurred as a part of that scheme, including aggravated discharge of a firearm in the direction of a peace officer.

People v. Chirchirillo, 393 Ill.App.3d 916, 913 N.E.2d 635 (2d Dist. 2009)

A defendant is legally accountable for another person’s criminal conduct if either before

or during the commission of the offense, and while acting with the intent to promote or facilitate the offense, he or she solicits, aids, abets, agrees or attempts to aid such other person in the planning or commission of an offense. To obtain a conviction based on accountability, the State must prove that a criminal offense was in fact committed by the principal. In other words, a defendant cannot be convicted as an accomplice if the State fails to establish the principal's guilt of the underlying crime.

Thus, defendant could not be found accountable for unlawful possession of a weapon by a felon where there was no evidence that the principal was a convicted felon. Although defendant was a felon and therefore could have been convicted of the offense had she possessed the weapon, she could not be convicted as an accomplice for a crime which the principal did not commit.

The court noted, however, an accomplice may be convicted of an offense for which the principal has an affirmative defense. (See also **APPEAL**, §2-6(a)).

(Defendant was represented by Panel Attorney Lawrence Fischer, Cary.)

People v. Evans, 405 Ill.App.3d 1005, 939 N.E.2d 1014 (2d Dist. 2010)

730 ILCS 154/1 *et seq.* requires that a person over the age of 17 who commits a “violent offense against youth” must register under the Child Murder and Violent Offender Against Youth Registration Act. First degree murder is a “violent offense against youth” if the victim was under 18 and the defendant was at least 17.

A person who was over the age of 17 at the time of the offense, and who is convicted as an accomplice, is required to register under the Act even if the principal was under the age of 17 and therefore not required to register. First, the plain language of the statute contains no exception for persons convicted as accomplices. Second, although an accomplice may not be convicted if the State fails to prove that the principal committed an element of the charged offense, that rule does not apply to collateral ramifications of a criminal conviction. “For example, if an alien defendant is convicted of a crime on an accountability theory and thus is subject to deportation, he would not avoid deportation simply because the principal is a United States citizen and not subject to deportation.”

(Defendant was represented by Assistant Defender Steve Wiltgen, Elgin.)

People v. Flynn, 2012 IL App (1st) 103687 (Nos. 1-10-3687 & 1-11-2379 cons., modified 1/22/13)

“Where one attaches himself to a group bent on illegal acts which are dangerous or homicidal in character, or which will probably or necessarily require the use of force or violence that could result in the taking of life unlawfully, he becomes accountable for any wrongdoings committed by other members of the group in furtherance of the common purpose, or as a natural or probable consequence thereof even though he did not actively participate in the overt act itself.”

Words of agreement are not necessary to establish a common purpose to commit a crime. The common design can be inferred from the circumstances surrounding the perpetration of the unlawful conduct.

Defendant planned with other gang members to return to where Collins and Taylor were playing dice to kill Collins. During the surprise attack, defendant and two other gang members pursued and killed Collins, while other gang members pursued and wounded Taylor, a potential witness against them.

There was sufficient evidence for a rational trier of fact to find defendant guilty of attempt first degree murder under an accountability theory. Defendant actively participated

in an attack on Collins and Taylor and, given the nature of the orchestrated attack, he cannot credibly claim that the shooting of Taylor in addition to Collins was unexpected or unanticipated. “[I]t was reasonable for the trier of fact to conclude that defendant subscribed to an unlawful venture that used violence and firearms and, as a natural consequence, resulted in the death of Collins and the severe wounding of Taylor.”

Gordon, J., dissented. There was no common design or agreement to kill Taylor in addition to Collins. Only one gang member pursued Taylor and he had his own private motive to harm Taylor. It is pure speculation that this gang member shot at Taylor to eliminate him as a witness to the killing of Collins. Defendant could not be held accountable where he had no knowledge of any common criminal design to harm Taylor and therefore could not intentionally aid in the scheme’s commission.

(Defendant was represented by Assistant Defender Adrienne River, Chicago.)

People v. Gibson, 403 Ill.App.3d 942, 934 N.E.2d 611 (2d Dist. 2010)

1. A person is legally accountable for another’s conduct when either before or during the commission of an offense, and with the intent to promote or facilitate an offense, he solicits, aids, abets, agrees, or attempts to aid such other person in the planning or commission of an offense. To prove guilt beyond a reasonable doubt of unlawful possession of a weapon by a felon, the person who possessed the weapon must be a convicted felon. Where an alleged accomplice had a prior felony conviction, but there was no evidence that either of the principals who possessed weapons were convicted felons, the State failed to prove defendant guilty as an accomplice of unlawful possession of a weapon by a felon.

2. Under 720 ILCS 5/7-13, the necessity defense is available if the defendant: (1) was without blame in developing a situation, and (2) reasonably believed that criminal conduct was necessary to avoid a public or private injury greater than the injury resulting from the crime. The necessity offense applies where the defendant must choose the lesser of two evils and has no other option. Thus, the defense excuses illegal conduct which is the only reasonable alternative available under the circumstances.

A defendant is entitled to a jury instruction on necessity if there is even slight evidence to support the defense.

The court acknowledged that defendant was blameless in developing the situation which led to armed robbery and aggravated kidnapping charges - defendant thought he was going to help with a moving job, but was later told that there was going to be a robbery. Defendant also claimed that he was told that the true nature of the enterprise had been withheld from him because his associates thought he might refuse to participate.

Although defendant claimed that he participated in the offense because he feared for his safety and that of his family, the court found that defendant could not have reasonably believed that participation was necessary to avoid a greater injury. The court noted that defendant was left alone several times during the offenses but failed to flee, use his cell phone to call for help, or seek help from nearby police officers. Instead, defendant continued with the criminal enterprise and subsequently helped the principals dispose of a stolen truck and conceal stolen property.

Because there was no basis for the defense, the trial court did not err by refusing to give a necessity instruction.

(Defendant was represented by Assistant Defender Vicki Kouros, Elgin.)

People v. Johnson, 2013 IL App (4th) 120162 (No. 4-12-0162, 4/5/13)

It is a due process violation to allow the State to rely on an accountability theory on

appeal to uphold a conviction where the State did not pursue that theory at trial by arguing or having the jury instructed on accountability.

Although the evidence was sufficient to uphold defendant's conviction on appeal on an accountability theory, the Appellate Court refused to do so because the State had not argued an accountability theory to the jury or ask to have the jury instructed on the law of accountability.

(Defendant was represented by Assistant Deputy Defender Nancy Vincent, Springfield.)

People v. Johnson, 2013 IL App (1st) 122459 (No. 1-12-2459, 12/31/13)

Under 720 ILCS 5/5-2(c) a person is accountable for the conduct of another if "either before or during the commission of an offense, with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense." Accountability cannot be established by merely showing that the defendant knew of or consented to the commission of the offense. It also cannot be established by defendant's mere presence at the scene of the crime even if coupled with defendant's flight from the scene or his knowledge that a crime has occurred.

Here, the State's evidence showed that defendant was driving a car with his co-defendant as a passenger. At some point, co-defendant saw a man named Brandon driving another vehicle. Co-defendant identified Brandon as the "dude that shot me," and told defendant to chase him. Defendant pursued the other car and eventually stopped in front of it. Co-defendant got out of the car, pulled out a gun, and fired several shots at Brandon. Brandon tried to dive away and in the process struck defendant's car. Defendant drove down the street and while co-defendant was still firing the gun, told him to "come on or I'm going to leave you." Co-defendant ran towards defendant's car still firing his gun. Co-defendant got back in the car and defendant drove away. Brandon eventually died from the gunshots. Defendant later told an acquaintance that co-defendant had been armed, and they had "made a move" on (meaning shot) a man in another vehicle.

The Appellate Court held that this evidence failed to prove that defendant was guilty by accountability for first degree murder. Even though he drove the co-defendant to the scene of the crime and then helped him escape, there was no evidence that defendant had a prior intent to facilitate the shooting since defendant did not know the victim would be shot before the offense occurred, nor even that the co-defendant was armed. Driving someone away from the scene of the crime does not establish accountability. Nor does presence at the crime scene coupled with knowledge that a crime has occurred and subsequent flight. And there can be no common design to shoot someone if the defendant does not know his co-defendant is armed.

The fact that co-defendant identified Brandon as the man who shot him does not prove that defendant intended to help him shoot Brandon. And even though co-defendant instructed defendant to chase Brandon, there was no evidence as to why co-defendant asked him to do this. Defendants statement to an acquaintance that co-defendant was armed and they "made a move" on Brandon were merely after-the-fact accounts of the events and do not establish what defendant's intent was prior to the shooting. They also do not show when defendant learned that co-defendant was armed. As a result, the Appellate Court concluded that the State failed to prove beyond a reasonable doubt that defendant intended to facilitate the murder either before or during the shooting. The court therefore reversed defendant's first degree murder conviction.

People v. Johnson, 2014 IL App (1st) 122459-B (No. 1-12-2459, 12/31/14)

Under 720 ILCS 5/5-2(c) a person is accountable for the conduct of another if "either

before or during the commission of an offense, with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense.” Accountability cannot be established by merely showing that the defendant knew of or consented to the commission of the offense. It also cannot be established by defendant’s mere presence at the scene of the crime even if coupled with defendant’s flight from the scene or his knowledge that a crime has occurred.

Here, the State’s evidence showed that defendant was driving a car with his co-defendant as a passenger. At some point, co-defendant saw a man named Brandon driving another vehicle. Co-defendant identified Brandon as the “dude that shot me,” and told defendant to chase him. Defendant pursued the other car and eventually stopped in front of it. Co-defendant got out of the car, pulled out a gun, and fired several shots at Brandon. Brandon tried to drive away and in the process struck defendant’s car. Defendant drove down the street and while co-defendant was still firing the gun, told him to “come on or I’m going to leave you.” Co-defendant ran towards defendant’s car still firing his gun. Co-defendant got back in the car and defendant drove away. Brandon eventually died from the gunshots. Defendant later told an acquaintance that co-defendant had been armed, and they had “made a move” on (meaning shot) a man in another vehicle.

The Appellate Court held that this evidence failed to prove that defendant was guilty by accountability for first degree murder. Even though he drove the co-defendant to the scene of the crime and then helped him escape, there was no evidence that defendant was involved in any advanced planning or had a prior intent to facilitate the shooting since defendant did not even know the co-defendant before he entered the car, let alone that he was armed and intended to shoot someone.

There was also no evidence that defendant participated in a common criminal design since defendant did nothing to assist the co-defendant during the crime. Driving someone away from the scene of the crime does not establish accountability. Nor does presence at the crime scene coupled with knowledge that a crime has occurred and subsequent flight.

The fact that co-defendant identified Brandon as the man who shot him does not prove that defendant intended to help him shoot Brandon. And even though co-defendant instructed defendant to chase Brandon, there was no evidence as to why co-defendant asked him to do this. Defendant’s statement to an acquaintance that co-defendant was armed and they “made a move” on Brandon were merely after-the-fact accounts of the events and do not establish what defendant’s intent was prior to the shooting. They also do not show when defendant learned that co-defendant was armed. As a result, the Appellate Court concluded that the State failed to prove beyond a reasonable doubt that defendant intended to facilitate the murder either before or during the shooting. The court therefore reversed defendant’s first degree murder conviction.

People v. McIntyre, 2011 IL App (2d) 100889 (No. 2-10-0889, 12/14/11)

To convict defendant under an accountability theory, the State must first establish a *prima facie* case against the principal.

Defendant was convicted of unlawful possession of a weapon by a felon. An essential element of that offense is that the principal is a convicted felon. Although defendant was a convicted felon, the principal was not. Because absent that evidence, the State failed to prove that the principal committed the offense of unlawful possession of a weapon by a felon, defendant could not be convicted of that offense under an accountability theory.

(Defendant was represented by Assistant Defender Sherry Silvern, Elgin.)

People v. Phillips, 2012 IL App (1st) 101923 (No. 1-10-1923, 5/15/12)

1. A person is legally accountable for the conduct of another if before or during the commission of an offense, and with the intent to promote or facilitate that offense, he solicits, aids, abets, agrees, or attempts to aid another person in the planning or commission of an offense. Mere presence of the scene of a crime does not render a person accountable for an offense, although such presence may be considered with other circumstances when determining accountability.

When two or more persons engage in a “common criminal design or agreement,” acts of one party in furtherance of the common design are considered to be the acts of all of the parties to the common design. Thus, all of the parties are equally responsible for the consequences of the acts of any of the parties. Individuals can be convicted under the common design rule only if they: (1) intend to assist the principal in planning or committing the offense, (2) commit an act which assists in the planning or commission of the offense, and (3) both form the required intent and perform the required act before or during the commission of the offense. An intention or act is irrelevant for accountability purposes if it is formed or performed after the offense is completed. Crucial questions in a common design case frequently involve the points of time at which the defendant formed the intent to assist the principal or committed an act which aided the principal in planning or committing the offense.

2. Defendant was charged under the “common design” rule with being accountable for aggravated battery with a firearm and aggravated discharge of a firearm. The State argued that four factors established that defendant was guilty under the common design rule: (1) defendant transported the shooter to the scene of the offense, (2) defendant used his vehicle to force the victims’ car to stop, (3) defendant positioned his car to cut off escape by the victims, and (4) defendant allowed the shooter to re-enter the vehicle after the offense.

The court found that defendant was not proven guilty under the common design rule. In **People v. Dennis**, 181 Ill. 2d 87, 692 N.E.2d 325 (1998), the Supreme Court held that for purposes of determining accountability, the duration of an offense is defined by the elements of that offense. Applying **Dennis**, the Appellate Court concluded that to prove guilt under the common design theory, the State was required to show that before or during the commission of the offense, the defendant intentionally aided or abetted the principal in conduct which constituted an element of either aggravated battery with a firearm or aggravated discharge of a firearm.

Aggravated battery with a firearm is complete when a firearm is discharged and a person is injured as a result. Aggravated discharge of a firearm is complete when a firearm is knowingly discharged in the direction of a person or vehicle. Because flight and escape are not elements of either offense, the court concluded that defendant’s act of driving the shooter away from the scene was irrelevant to whether he was accountable for the offenses.

The court noted that had the charge been felony murder, the perpetrator’s escape would have been considered part of the offense. By contrast, accountability is determined by the defendant’s actions before or during an offense and not by actions which occur after the offense is complete.

The court also rejected the argument that the remaining three factors indicated that the defendant was part of a common design to commit the offenses. First, the fact that defendant transported the shooter to the scene did not indicate that he participated in a common design, because there was no evidence that defendant knew that the shooter was armed. “If defendant did not know that [the shooter] had a gun, then regardless of what else defendant may have done he cannot have intended to help [the shooter] commit a crime that necessarily requires a firearm.” The court added that even evidence that defendant knew the

shooter was carrying a gun while he was a passenger in defendant's vehicle would not establish that defendant knew that the shooter intended to commit a crime.

Second, the evidence did not show that defendant intended to assist in the crimes by using his car to stop the victims' car. The evidence showed that defendant's car was following the victims' car, and that defendant was making a left turn when the victims' car made a sudden U-turn that may not have been preceded by a turn signal. Although the cars nearly collided, there was no evidence that defendant was responsible for the near-collision or that he acted to help the shooter commit an offense. "It is unreasonable to assume that defendant's left-hand turn under these circumstances unequivocally shows that he intentionally forced the victims' vehicle to stop."

Finally, there was at best inconclusive evidence that defendant positioned his car to block the victims' escape route. Even if defendant's car blocked access to the north when he came to a stop after the near-collision, the victims' vehicle was in the intersection and could have escaped by making either a left or right turn. "The evidence is hardly conclusive that defendant was deliberately trying to trap the victims in preparation for an ambush."

The court concluded that even construing the evidence most favorably to the State, there was insufficient evidence to establish that defendant was accountable for the shooter's actions. Defendant's convictions were reversed.

3. In dissent, Justice Quinn stated that taking the evidence most favorably to the State and applying **People v. Taylor**, 164 Ill. 2d 131, 646 N.E.2d 567 (1995), a finding of accountability could be affirmed because defendant was present during the crime, maintained a close association with the shooter after the crime, failed to report the crime, and fled the scene.

(Defendant was represented by Assistant Defender Jonathan Steffy, Chicago.)

People v. Slater, 393 Ill.App.3d 977, ___ N.E.2d ___ (4th Dist. 2009) (No. 4-07-0966, 6/26/09)

Under the "transferred intent" theory, a defendant who shoots at one person with intent to kill, but actually kills an unintended victim, may be convicted of murdering the unintended victim. The Appellate Court concluded that the doctrine should be termed "transferred mental state" rather than "transferred intent," and applies where the defendant acts with knowledge as well as intent. Thus, where the defendant fires at one person with knowledge that death or great bodily harm may occur, but strikes and kills an unintended person, a conviction of "knowing" murder is permitted.

(Defendant was represented by Assistant Defender Ryan Wilson, Springfield.)

People v. Snowden, ___ Ill.App.3d ___, ___ N.E.2d ___ (1st Dist. 2011) (No. 1-09-2117, 6/10/11)

1. A defendant may be found guilty under an accountability theory even though the identity of the principal is not known. The State need only prove that defendant shared a common criminal design to commit an offense with the principal.

2. IPI Criminal 4th No. 5.06 states: "A person who is legally responsible for the conduct of another may be convicted for the offense committed by the other person even though the other person, who it is claimed committed the offense, [(has not been prosecuted) (has not been convicted) (has been convicted of a different offense) (is not amenable to justice) (has been acquitted)]."

It is not error to include the phrase "is not amenable to justice," rather than "has not been prosecuted," where the evidence is not clear as to the identity of the co-offender. "Amenable" means "legally answerable; liable to being brought to judgment" according to

Black's Law Dictionary. Where the evidence does not establish who was "legally answerable for the crime" because the principal remains unidentified at trial, the language "is not amenable to justice" is appropriate. Moreover, under either option, the jury is informed that a person who is legally responsible for the conduct of another can be convicted of an offense committed by the other person regardless of the legal status of the other person.

(Defendant was represented by Assistant Defender Tomas Gonzalez, Chicago.)

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Instructions

People v. Snowden, ___ Ill.App.3d ___, ___ N.E.2d ___ (1st Dist. 2011) (No. 1-09-2117, 6/10/11)

1. A defendant may be found guilty under an accountability theory even though the identity of the principal is not known. The State need only prove that defendant shared a common criminal design to commit an offense with the principal.

2. IPI Criminal 4th No. 5.06 states: "A person who is legally responsible for the conduct of another may be convicted for the offense committed by the other person even though the other person, who it is claimed committed the offense, [(has not been prosecuted) (has not been convicted) (has been convicted of a different offense) (is not amenable to justice) (has been acquitted)]."

It is not error to include the phrase "is not amenable to justice," rather than "has not been prosecuted," where the evidence is not clear as to the identity of the co-offender. "Amenable" means "legally answerable; liable to being brought to judgment" according to Black's Law Dictionary. Where the evidence does not establish who was "legally answerable for the crime" because the principal remains unidentified at trial, the language "is not amenable to justice" is appropriate. Moreover, under either option, the jury is informed that a person who is legally responsible for the conduct of another can be convicted of an offense committed by the other person regardless of the legal status of the other person.

(Defendant was represented by Assistant Defender Tomas Gonzalez, Chicago.)

People v. Ulloa, 2015 IL App (1st) 131632 (No. 1-13-1632, 6/30/15)

To prove the offense of conspiracy to deliver cocaine, the State must prove that defendant himself agreed to the delivery. 720 ILCS 570/405.1. The State cannot prove conspiracy to deliver by showing that defendant was accountable for the actions of another person who agreed to the delivery. The trial court thus committed plain error under both the closely balanced evidence and serious error prongs by instructing the jury that they could find defendant guilty of conspiracy under a theory of accountability.

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§1-3

Examples: Convictions Affirmed

People v. Fernandez, 2014 IL 115527 (No. 115527, 3/20/14)

1. 720 ILCS 5/5-2(c) provides that a person is legally accountable for the criminal conduct of another if before or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid the other person in the planning or commission of the offense. The State may prove intent to promote or facilitate the crime by presenting evidence that the defendant shared the criminal intent of the principal or by showing that there was a common criminal design. Under the “common-design” rule, if two or more persons engage in a common criminal design or agreement, any acts which one party commits in furtherance of the common design are considered to be the acts of all of the parties to the design or agreement.

In addition, evidence that a defendant voluntarily attached himself to a group which intended to commit illegal acts, with knowledge of that intent, gives rise to an inference that defendant shared the common purpose. That inference will support a finding that defendant is guilty by accountability for an offense committed by another member of the group.

The court rejected **People v. Phillips**, 2012 IL App (1st) 101923, which held that a defendant who is part of a common design is not deemed to have intended to assist in the commission of a crime involving a firearm if he did not know that another member of the group possessed a firearm. Under the common design rule, once a defendant agrees to participate in a crime, he is liable for every criminal act committed in connection with that design, including unplanned shootings committed by a companion whom defendant did not know was armed.

2. Here, defendant was properly convicted of aggravated discharge of a firearm in the direction of a peace officer. Defendant entered into a plan to burglarize cars with a companion whom defendant did not know was armed. Defendant waited in the car while his companion burglarized a car. An off-duty police officer interrupted the offense, and gunshots were exchanged between the officer and the companion as defendant drove the companion from the scene. Defendant remained in close company with the companion for several hours until they were arrested, and not only failed to report the shooting but took steps to conceal it.

Under these circumstances, defendant was part of a common design bent on committing criminal acts. Thus, defendant was accountable for all crimes committed in furtherance of the common design, including the unplanned shooting.

3. The court distinguished **People v. Dennis**, 181 IL 2d 87, 692 N.E.2d 325, (1998) and **People v. Taylor**, 186 IL 2d 439, 712 N.E.2d 326 (1999), which involved accountability by persons who drove alleged principals from crime scenes but without knowledge of the principals’ intent to commit a crime. The issue in **Dennis** and **Taylor** was whether the alleged accomplice shared the principal’s intent, not whether there was a common design to commit criminal offenses. Here, by contrast, the defendant agreed to be part of the scheme to commit burglaries. Under the common design rule, he was accountable for all offenses which occurred as a part of that scheme, including aggravated discharge of a firearm in the direction of a peace officer.

People v. Flynn, 2012 IL App (1st) 103687 (Nos. 1-10-3687 & 1-11-2379 cons., modified 1/22/13)

“Where one attaches himself to a group bent on illegal acts which are dangerous or homicidal in character, or which will probably or necessarily require the use of force or violence that could result in the taking of life unlawfully, he becomes accountable for any wrongdoings committed by other members of the group in furtherance of the common purpose, or as a natural or probable consequence thereof even though he did not actively participate in

the overt act itself.”

Words of agreement are not necessary to establish a common purpose to commit a crime. The common design can be inferred from the circumstances surrounding the perpetration of the unlawful conduct.

Defendant planned with other gang members to return to where Collins and Taylor were playing dice to kill Collins. During the surprise attack, defendant and two other gang members pursued and killed Collins, while other gang members pursued and wounded Taylor, a potential witness against them.

There was sufficient evidence for a rational trier of fact to find defendant guilty of attempt first degree murder under an accountability theory. Defendant actively participated in an attack on Collins and Taylor and, given the nature of the orchestrated attack, he cannot credibly claim that the shooting of Taylor in addition to Collins was unexpected or unanticipated. “[I]t was reasonable for the trier of fact to conclude that defendant subscribed to an unlawful venture that used violence and firearms and, as a natural consequence, resulted in the death of Collins and the severe wounding of Taylor.”

Gordon, J., dissented. There was no common design or agreement to kill Taylor in addition to Collins. Only one gang member pursued Taylor and he had his own private motive to harm Taylor. It is pure speculation that this gang member shot at Taylor to eliminate him as a witness to the killing of Collins. Defendant could not be held accountable where he had no knowledge of any common criminal design to harm Taylor and therefore could not intentionally aid in the scheme’s commission.

(Defendant was represented by Assistant Defender Adrienne River, Chicago.)

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§1-4

Examples: Convictions Reversed

People v. Cowart, 2015 IL App (1st) 113085 (No. 1-11-3085, 2/9/15)

Under the common design rule of accountability, where two or more people engage in a common criminal design, any acts in furtherance of that common design are considered to be the acts of all the members, and they are all legally responsible for the consequences of those acts. The Appellate Court reversed defendant’s conviction for first degree murder holding that there was no evidence that defendant or anyone he was accountable for under a theory of common design fired the shot that killed Lee, the deceased victim.

The evidence showed that a fight broke out at a large street party attended by 100 - 200 people. During the fight, which involved numerous individuals, defendant punched a woman in the face, and later fired shots at some of the women he was fighting with. Several men associated with defendant also fired shots at the women. Many other men at the party who were not associated with defendant had guns and fired shots.

At some point during the melee, Lee was shot in the back and killed. Several people were standing near Lee and fired guns, but the person who fired the fatal shot was never identified. The State’s evidence thus showed that defendant and his associates shot at the group of women they were fighting with, but did not show that any of these shots hit Lee by

accident.

To establish a common criminal design resulting in murder, however, the State had to prove that Lee's unknown shooter shared defendant's common design to shoot at the women, but instead shot Lee by accident. The State failed to show this and thus failed to prove that defendant was accountable for Lee's murder.

(Defendant was represented by Assistant Defender Chris Gehrke, Chicago.)

People v. Garrett, 401 Ill.App.3d 238, 928 N.E.2d 531 (1st Dist. 2010)

Defendant was not proven guilty beyond a reasonable doubt of first degree murder, on an accountability theory, for acting as the getaway driver and helping to plan an armed robbery. A person is legally accountable for criminal conduct where before or during the commission of an offense, with the intent to promote or facilitate an offense, he solicits, aids, abets, agrees or attempts to aid another in the planning or commission of an offense. There was adequate evidence to conclude that defendant was involved in the planning and commission of the offense, but no evidence that the decedent's death occurred as a result of the armed robbery.

After a police officer entered the store during the robbery, the perpetrators fled. The decedent's body was found a short time later in another part of the store. Although the decedent died from a gunshot wound, a forensic analyst was unable to determine whether the bullet recovered from the corpse had been fired by the weapon taken from one of the principals in the armed robbery.

Defendant was not charged as an accomplice to armed robbery – for which he could have been convicted – but for being an accomplice to murder on a felony murder theory. Because there was “total absence of evidence proving or even suggesting who caused” the decedent's death, the conviction was reversed on reasonable doubt grounds.

People v. Gibson, 403 Ill.App.3d 942, 934 N.E.2d 611 (2d Dist. 2010)

1. A person is legally accountable for another's conduct when either before or during the commission of an offense, and with the intent to promote or facilitate an offense, he solicits, aids, abets, agrees, or attempts to aid such other person in the planning or commission of an offense. To prove guilt beyond a reasonable doubt of unlawful possession of a weapon by a felon, the person who possessed the weapon must be a convicted felon. Where an alleged accomplice had a prior felony conviction, but there was no evidence that either of the principals who possessed weapons were convicted felons, the State failed to prove defendant guilty as an accomplice of unlawful possession of a weapon by a felon.

2. Under 720 ILCS 5/7-13, the necessity defense is available if the defendant: (1) was without blame in developing a situation, and (2) reasonably believed that criminal conduct was necessary to avoid a public or private injury greater than the injury resulting from the crime. The necessity offense applies where the defendant must choose the lesser of two evils and has no other option. Thus, the defense excuses illegal conduct which is the only reasonable alternative available under the circumstances.

A defendant is entitled to a jury instruction on necessity if there is even slight evidence to support the defense.

The court acknowledged that defendant was blameless in developing the situation which led to armed robbery and aggravated kidnapping charges - defendant thought he was going to help with a moving job, but was later told that there was going to be a robbery. Defendant also claimed that he was told that the true nature of the enterprise had been withheld from him because his associates thought he might refuse to participate.

Although defendant claimed that he participated in the offense because he feared for his safety and that of his family, the court found that defendant could not have reasonably believed that participation was necessary to avoid a greater injury. The court noted that defendant was left alone several times during the offenses but failed to flee, use his cell phone to call for help, or seek help from nearby police officers. Instead, defendant continued with the criminal enterprise and subsequently helped the principals dispose of a stolen truck and conceal stolen property.

Because there was no basis for the defense, the trial court did not err by refusing to give a necessity instruction.

(Defendant was represented by Assistant Defender Vicki Kouros, Elgin.)

People v. Johnson, 2013 IL App (1st) 122459 (No. 1-12-2459, 12/31/13)

Under 720 ILCS 5/5-2(c) a person is accountable for the conduct of another if “either before or during the commission of an offense, with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense.” Accountability cannot be established by merely showing that the defendant knew of or consented to the commission of the offense. It also cannot be established by defendant’s mere presence at the scene of the crime even if coupled with defendant’s flight from the scene or his knowledge that a crime has occurred.

Here, the State’s evidence showed that defendant was driving a car with his co-defendant as a passenger. At some point, co-defendant saw a man named Brandon driving another vehicle. Co-defendant identified Brandon as the “dude that shot me,” and told defendant to chase him. Defendant pursued the other car and eventually stopped in front of it. Co-defendant got out of the car, pulled out a gun, and fired several shots at Brandon. Brandon tried to dive away and in the process struck defendant’s car. Defendant drove down the street and while co-defendant was still firing the gun, told him to “come on or I’m going to leave you.” Co-defendant ran towards defendant’s car still firing his gun. Co-defendant got back in the car and defendant drove away. Brandon eventually died from the gunshots. Defendant later told an acquaintance that co-defendant had been armed, and they had “made a move” on (meaning shot) a man in another vehicle.

The Appellate Court held that this evidence failed to prove that defendant was guilty by accountability for first degree murder. Even though he drove the co-defendant to the scene of the crime and then helped him escape, there was no evidence that defendant had a prior intent to facilitate the shooting since defendant did not know the victim would be shot before the offense occurred, nor even that the co-defendant was armed. Driving someone away from the scene of the crime does not establish accountability. Nor does presence at the crime scene coupled with knowledge that a crime has occurred and subsequent flight. And there can be no common design to shoot someone if the defendant does not know his co-defendant is armed.

The fact that co-defendant identified Brandon as the man who shot him does not prove that defendant intended to help him shoot Brandon. And even though co-defendant instructed defendant to chase Brandon, there was no evidence as to why co-defendant asked him to do this. Defendants statement to an acquaintance that co-defendant was armed and they “made a move” on Brandon were merely after-the-fact accounts of the events and do not establish what defendant’s intent was prior to the shooting. They also do not show when defendant learned that co-defendant was armed. As a result, the Appellate Court concluded that the State failed to prove beyond a reasonable doubt that defendant intended to facilitate the murder either before or during the shooting. The court therefore reversed defendant’s first degree murder conviction.

People v. Johnson, 2014 IL App (1st) 122459-B (No. 1-12-2459, 12/31/14)

Under 720 ILCS 5/5-2(c) a person is accountable for the conduct of another if “either before or during the commission of an offense, with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense.” Accountability cannot be established by merely showing that the defendant knew of or consented to the commission of the offense. It also cannot be established by defendant’s mere presence at the scene of the crime even if coupled with defendant’s flight from the scene or his knowledge that a crime has occurred.

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The Appellate Court held that this evidence failed to prove that defendant was guilty by accountability for first degree murder. Even though he drove the co-defendant to the scene of the crime and then helped him escape, there was no evidence that defendant was involved in any advanced planning or had a prior intent to facilitate the shooting since defendant did not even know the co-defendant before he entered the car, let alone that he was armed and intended to shoot someone.

There was also no evidence that defendant participated in a common criminal design since defendant did nothing to assist the co-defendant during the crime. Driving someone away from the scene of the crime does not establish accountability. Nor does presence at the crime scene coupled with knowledge that a crime has occurred and subsequent flight.

The fact that co-defendant identified Brandon as the man who shot him does not prove that defendant intended to help him shoot Brandon. And even though co-defendant instructed defendant to chase Brandon, there was no evidence as to why co-defendant asked him to do this. Defendant’s statement to an acquaintance that co-defendant was armed and they “made a move” on Brandon were merely after-the-fact accounts of the events and do not establish what defendant’s intent was prior to the shooting. They also do not show when defendant learned that co-defendant was armed. As a result, the Appellate Court concluded that the State failed to prove beyond a reasonable doubt that defendant intended to facilitate the murder either before or during the shooting. The court therefore reversed defendant’s first degree murder conviction.

People v. McIntyre, 2011 IL App (2d) 100889 (No. 2-10-0889, 12/14/11)

To convict defendant under an accountability theory, the State must first establish a *prima facie* case against the principal.

Defendant was convicted of unlawful possession of a weapon by a felon. An essential element of that offense is that the principal is a convicted felon. Although defendant was a convicted felon, the principal was not. Because absent that evidence, the State failed to prove that the principal committed the offense of unlawful possession of a weapon by a felon, defendant could not be convicted of that offense under an accountability theory.

(Defendant was represented by Assistant Defender Sherry Silvern, Elgin.)

People v. Phillips, 2012 IL App (1st) 101923 (No. 1-10-1923, 5/15/12)

1. A person is legally accountable for the conduct of another if before or during the commission of an offense, and with the intent to promote or facilitate that offense, he solicits, aids, abets, agrees, or attempts to aid another person in the planning or commission of an offense. Mere presence of the scene of a crime does not render a person accountable for an offense, although such presence may be considered with other circumstances when determining accountability.

When two or more persons engage in a “common criminal design or agreement,” acts of one party in furtherance of the common design are considered to be the acts of all of the parties to the common design. Thus, all of the parties are equally responsible for the consequences of the acts of any of the parties. Individuals can be convicted under the common design rule only if they: (1) intend to assist the principal in planning or committing the offense, (2) commit an act which assists in the planning or commission of the offense, and (3) both form the required intent and perform the required act before or during the commission of the offense. An intention or act is irrelevant for accountability purposes if it is formed or performed after the offense is completed. Crucial questions in a common design case frequently involve the points of time at which the defendant formed the intent to assist the principal or committed an act which aided the principal in planning or committing the offense.

2. Defendant was charged under the “common design” rule with being accountable for aggravated battery with a firearm and aggravated discharge of a firearm. The State argued that four factors established that defendant was guilty under the common design rule: (1) defendant transported the shooter to the scene of the offense, (2) defendant used his vehicle to force the victims’ car to stop, (3) defendant positioned his car to cut off escape by the victims, and (4) defendant allowed the shooter to re-enter the vehicle after the offense.

The court found that defendant was not proven guilty under the common design rule. In **People v. Dennis**, 181 Ill. 2d 87, 692 N.E.2d 325 (1998), the Supreme Court held that for purposes of determining accountability, the duration of an offense is defined by the elements of that offense. Applying **Dennis**, the Appellate Court concluded that to prove guilt under the common design theory, the State was required to show that before or during the commission of the offense, the defendant intentionally aided or abetted the principal in conduct which constituted an element of either aggravated battery with a firearm or aggravated discharge of a firearm.

Aggravated battery with a firearm is complete when a firearm is discharged and a person is injured as a result. Aggravated discharge of a firearm is complete when a firearm is knowingly discharged in the direction of a person or vehicle. Because flight and escape are not elements of either offense, the court concluded that defendant’s act of driving the shooter away from the scene was irrelevant to whether he was accountable for the offenses.

The court noted that had the charge been felony murder, the perpetrator’s escape would have been considered part of the offense. By contrast, accountability is determined by the defendant’s actions before or during an offense and not by actions which occur after the offense is complete.

The court also rejected the argument that the remaining three factors indicated that the defendant was part of a common design to commit the offenses. First, the fact that defendant transported the shooter to the scene did not indicate that he participated in a common design, because there was no evidence that defendant knew that the shooter was armed. “If defendant did not know that [the shooter] had a gun, then regardless of what else

defendant may have done he cannot have intended to help [the shooter] commit a crime that necessarily requires a firearm.” The court added that even evidence that defendant knew the shooter was carrying a gun while he was a passenger in defendant’s vehicle would not establish that defendant knew that the shooter intended to commit a crime.

Second, the evidence did not show that defendant intended to assist in the crimes by using his car to stop the victims’ car. The evidence showed that defendant’s car was following the victims’ car, and that defendant was making a left turn when the victims’ car made a sudden U-turn that may not have been preceded by a turn signal. Although the cars nearly collided, there was no evidence that defendant was responsible for the near-collision or that he acted to help the shooter commit an offense. “It is unreasonable to assume that defendant’s left-hand turn under these circumstances unequivocally shows that he intentionally forced the victims’ vehicle to stop.”

Finally, there was at best inconclusive evidence that defendant positioned his car to block the victims’ escape route. Even if defendant’s car blocked access to the north when he came to a stop after the near-collision, the victims’ vehicle was in the intersection and could have escaped by making either a left or right turn. “The evidence is hardly conclusive that defendant was deliberately trying to trap the victims in preparation for an ambush.”

The court concluded that even construing the evidence most favorably to the State, there was insufficient evidence to establish that defendant was accountable for the shooter’s actions. Defendant’s convictions were reversed.

3. In dissent, Justice Quinn stated that taking the evidence most favorably to the State and applying **People v. Taylor**, 164 Ill. 2d 131, 646 N.E.2d 567 (1995), a finding of accountability could be affirmed because defendant was present during the crime, maintained a close association with the shooter after the crime, failed to report the crime, and fled the scene.

(Defendant was represented by Assistant Defender Jonathan Steffy, Chicago.)

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